

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “**Agreement**”) is entered into as of _____ day of August 2021 (“**Effective Date**”) by and between the City of San Luis, an Arizona municipal corporation (the “**City**”) and Comite De Bienestar, Inc., an Arizona non-profit corporation, (the “**Owner**”). This Agreement is entered into pursuant to City Resolution Number 2193.

RECITALS

A. WHEREAS, A.R.S. § 9-500.05 authorizes the City to enter into development agreements with landowners and persons having an interest in real property that is located in the City; and

B. WHEREAS, Greater Yuma Port Authority, Inc., Owner, owns property located in the municipal limits of the City and is currently developing a low income housing project known as Valley View Apartments (the “**Property**”), and

C. WHEREAS, the City has pledged its support for said project pursuant to Resolution No. _____ of the City of San Luis and has entered into a Memorandum of Understanding for development of said project; and

D. WHEREAS, as part of the development improvements are needed on Fourth Avenue which include, but are not limited to, changes in the slope of the existing roadway and a lowering of a water line located in the road right of way, the construction of which will improve traffic safety and improve traffic flow generally; and

E. WHEREAS, the Owner has requested the City to contribute to improvements in the existing roadway, the failure of which could result in loss to the community of a needed low-income housing development; and

F. WHEREAS, the City’s governing body has authorized execution of this Agreement by Resolution No. 2193.

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

ARTICLE 1. DEFINITIONS

The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise:

1.1. Certificate of Completion as used in this Agreement, shall mean a final written acceptance of the completed and inspected project issued by Public Works Department. A certificate of completion will not be issued until the entire project is completed in conformance with this Agreement and accepted by the City.

1.2. City shall mean and refer to the City of San Luis, an Arizona municipal corporation, and any successor public body or entity.

1.3. Owner shall mean and refer to Comite De Bienestar, Inc., an Arizona non-profit corporation, and any successor in ownership.

1.4. Improvements shall mean and refer to all public improvements with regards to reconstruction of portions of Fourth Ave. which are identified in the draft traffic study submitted to the city by email on August 12, 2021, and the construction work required for utility relocation as a result of the work being performed on Fourth Ave. These Improvements shall be such improvements on Fourth Ave. as may be required by the Public Works Director of the City of San Luis, in his sole discretion, as part of the development of the Property, and may include, without limitation, roadway, driveways, water mains, wastewater mains, walls, landscaping, and other infrastructure or utility improvements of any type or kind, or any other alteration of the natural terrain to be built by the Owner or the City, as the case may be.

1.5. Property as used in this Agreement shall mean and refer to all of the real property which is described in as Valley View Apartment Project which is part of Exhibit A.

ARTICLE 2. DEVELOPMENT PLAN

2.1. Duration of Development Agreement. The term of this Agreement shall be for a period of five (5) years from date of execution.

2.2. Failure of Timely Performance. In the event that either party hereto fails to perform any of its obligations which are set forth in or contemplated by this Agreement in a timely manner, and should such failure not otherwise be excused by agreement of the parties or by the terms of this Agreement, such failure shall be considered to be a breach of this Agreement and the nonbreaching party shall have their respective remedies set forth in Section 6.3 of this Agreement.

2.3. Approval and Processing of Plans. The City hereby acknowledges and agrees that development of the Improvements are as part of the overall Valley View Apartment Project, and will require the City's ongoing participation in the review and approval of modifications and amendments to any infrastructure plans, drainage plans, design plans, grading permits, building permits, archaeological and historic preservation review and disposition, and other plans, permit applications and inspections which are a part of the City's building and development requirements (hereinafter collectively called "**Approval Requests**"). The current Memorandum of Understanding between the parties provides for the posting of financial assurances for the Improvements which are the subject of this Agreement prior to the issuance of building permits. By this agreement the amount of financial assurances being required shall be the sum of \$190,000.00.

2.4. City Contribution. For the Improvements which are the subject of this agreement, Owner shall design, develop and construct all Improvements, and the City shall financially contribute to the cost of said development of the Improvements all sums needed to design, develop and construct said improvements above the amount of \$190,000.00 up to the amount of \$350,000.00. (Total cost of Improvements for which contribution is sought being \$350,000.00. Owner to contribute \$190,000.00 of this cost and City to contribute up to \$160,000.00 of the total cost by reimbursing Owner for any costs for Improvements incurred greater than \$190,000.00 up to said limit of \$160,000.00). City will pay its contribution within thirty (30) days of invoice. Any costs for development of Improvements in excess of the total of \$350,000.00 to be borne solely by Owner.

2.5. Review Process. The City acknowledges the necessity for expeditious review by the City of all plans and other materials ("**Submitted Materials**") submitted by the Owner to the City hereunder or pursuant to any zoning procedure, permit procedure, or other governmental procedure pertaining to the development of the Property and agrees to use its reasonable efforts accomplish such an expeditious review of the Submitted Materials whenever possible.

ARTICLE 3. INDEMNIFICATION

3.1. Owner agrees to defend, indemnify and hold harmless City, its officers, officials and employees ("**Indemnified Group**") for liability from and against claims, damages, losses and expenses of any nature whatsoever (including but not limited to reasonable attorney fees, court costs, the costs of appellate proceedings, and all claim adjusting and handling expense), relating to, arising out of, resulting from or alleged to have resulted from the Owner's acts, errors, mistakes or omissions relating to any action or inaction of the Owner under this Agreement, including but not limited to work or services in the performance of this Agreement by any subcontractor or anyone directly or indirectly employed by or contracting with the Owner or a subcontractor or anyone for whose acts any of them may be liable.

3.2. If any claim, action or proceeding is brought against the Indemnified Group, by reason of any event that is the subject of this Agreement, Owner (at its sole cost and expense) shall pay, resist or defend such claim or action on behalf of the Indemnified Group by the attorney of the Owner, or if covered by insurance, Owner's insurer, all of which must be approved by City, which approval shall not be unreasonably withheld or delayed. The City shall cooperate with all reasonable efforts in the handling and defense of such claim. Notwithstanding the foregoing, the City may engage its own attorney to defend or assist in its defense, and the Owner shall pay the reasonable costs and expenses thereof.

3.3. Any settlement of claims must fully release and discharge the Indemnified Group from any liability for such claims. The release and discharge shall be in writing and shall be subject to approval by the City, which approval shall not be unreasonably withheld or delayed. If Owner neglects or refuses to defend any of the Indemnified Group as required by this Agreement, any recovery or judgment against the Indemnified Group for a claim covered by this Agreement shall conclusively establish Owner's liability to the Indemnified Group in connection with such recovery or judgment. If the City desires to settle such dispute, the City shall be

entitled to settle such dispute in good faith and Owner shall be liable for the amount of such settlement, and all expenses in connection with such settlement.

3.4. The indemnity provisions of this Agreement shall survive the termination of this Agreement.

ARTICLE 4. MEDIATION AND DEFAULT

4.1. Representatives. To further the cooperation of the parties in implementing this Agreement, the City and Owner each shall designate and appoint a representative to act as a liaison between the City and its various departments and the Owner. The initial representative for the City (the “**City Representative**”) shall be the City Manager and the initial representative for the Owner shall be its project manager, as identified by the Owner from time to time (the “**Developer Representative**”). The representatives shall be available at all reasonable times to discuss and review the performance of the parties to this Agreement and the development of the Property.

4.2. Mediation. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, either party may request the presiding judge of the Superior Court of Yuma County to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool.

4.3. Default. Failure or unreasonable delay by any party to perform any term or provision of this Agreement for a period of ten (10) days after written notice thereof from another party shall constitute a default under this Agreement. If the default is of a nature which is not capable of being cured within ten (10) days, the cure shall be commenced within such period, and diligently pursued to completion. The notice shall specify the nature of the alleged default and the manner in which the default may be satisfactorily cured. In the event of a default hereunder by any party, the non-defaulting party shall be entitled to all remedies at both law and in equity, including, without limitation, specific performance and the right to perform the obligation(s) of which the defaulting party is in default and to immediately seek reimbursement from the defaulting party of all sums expended in order to cure such default, together with interest on all such sums from the date said sums are expended by the non-defaulting party for the purpose of curing the default to the date such sums are paid in full.

ARTICLE 5. CONFLICT OF INTEREST; REPRESENTATIVES NOT INDIVIDUALLY LIABLE

5.1. Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation,

partnership or association in which he or she is, directly or indirectly, interested. This agreement is subject to the provisions of A.R.S. §38-511.

5.2.No Personal Liability. No member, official or employee of the City shall be personally liable to Owner, or any successor or assignee, (a) in the event of any default or breach by the City, (b) for any amount which may become due to the Owner or its successor or assign, or (c) pursuant to any obligation of the City under the terms of this Agreement.

ARTICLE 6. MISCELLANEOUS PROVISIONS

6.1.Notices. All notices and communications provided for herein, or given in connection herewith, shall be validly made if in writing and delivered personally or sent by registered or certified United States Postal Service mail, return receipt requested, postage prepaid to:

If to the City: City Manager
 City of San Luis
 P.O. Box 1170
 1090 E. Union Street
 San Luis, Arizona 85349

If to the Owner: Comite De Bienestar, Inc.
 963 East B Street
 San Luis, AZ 85349

or to such other addresses as either party may from time to time designate in writing and deliver in a like manner. Any such change of address notice shall be given at least ten (10) days before the date on which the change is to become effective. Notices given by mail shall be deemed delivered 72 hours following deposit in the United States Postal Service in the manner set forth above.

6.2.Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this Agreement.

6.3.Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only, and shall not control or affect the meaning or construction of any of the provisions of the Agreement.

6.4.Authority. The undersigned represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. The Owner represents and warrants that it is duly formed and validly existing under the laws of the State of Arizona and that it is duly qualified to do business in the State of Arizona and is in good standing under applicable state laws. The Owner and the City warrant to each other that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the party on whose behalf each individual is signing. The Owner represents to the City that by entering into this Agreement, the

Owner has bound the Property and all persons and entities having any legal or equitable interest therein to the terms of the Agreement.

6.5. Amendment of the Agreement. This Agreement may be amended, in whole or in part and with respect to all or any portion of the Property, only with the mutual written consent of the parties to this Agreement or by their successors in interest or assigns. The City shall record the amendment or cancellation in the official records of the Yuma County Recorder.

6.6. Severability. If any other provision of the Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect.

6.7. Governing Law. The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement. The parties agree that venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Yuma County, Arizona, and the parties hereby waive any right to object to such venue.

6.8. Recordation of Agreement and Subsequent Amendment; Cancellation. This Agreement, and any amendment or cancellation of it shall be recorded in the official records of the Yuma County Recorder no later than ten (10) days after the City and the Owner execute such agreement, amendment, or cancellation, as required by A.R.S. § 9-500.05.

6.9. Attorneys' Fees and Costs. If either party brings a legal action either because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and court costs.

6.10. Notice of Conveyance or Assignment. The Owner shall give notice to the City of any sale of the entire Property at least ten (10) days prior to the effective date of the sale.

6.11. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement, and no person or entity not a party hereto shall have any right or cause of action hereunder.

6.12. No Agency Created. Nothing contained in this Agreement shall create any partnership, joint venture, or agency relationship between the parties.

6.13. Non-Liability of City Officials and Employees. Except for mandamus and other special actions, no member, official or employee of the City shall be personally liable to Owner, or any successor in interest, in the event of any default or breach by the City or for any amount that may become due to the Owner or successor, or under any obligation under the terms of this Agreement.

6.14. Time is of the Essence. Time is of the essence of this agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

THE CITY OF SAN LUIS,
an Arizona municipal corporation

THE OWNER, Comite De Bienestar, Inc.

By: _____
Mayor

By: _____
Its: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF ARIZONA)
) ss.
County of Yuma)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by Gerardo Sanchez, Mayor of the City of San Luis, Arizona, a municipal corporation.

Notary Public

My Commission Expires: _____

STATE OF ARIZONA)
) ss.
County of Yuma)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____, on behalf of _____, an _____.

Notary Public

My Commission Expires: _____

Exhibit A

Exhibit B